

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 4 September 2013

Public Authority: Health and Safety Executive
Address: Redgrave Court
Merton Road
Bootle
Merseyside
L20 7HS

Decision (including any steps ordered)

1. The complainant has requested from the Health and Safety Executive (the HSE) specific information relating to an accident at a Bradwell power station in 1981. The HSE provided some of the information and withheld a small amount under regulation 13 as it was the personal data of third parties.
2. The Commissioner's decision is that the HSE was correct to rely on regulation 13 to withhold the information. He does not require the HSE to take any steps in this case.

Request and response

3. On 17 June 2011, the complainant wrote to the HSE and requested information in the following terms:

"Copy of NUC 301/22"
4. The HSE responded on 12 July 2011 advising that NUC 301/22 was a filing reference rather than a specific document. However, it advised that having considered the context in which the request was made, it located a document which was believed to be relevant to the request.

This was provided with a small amount of information redacted under regulation 13.

5. Following an internal review on 4 August 2011, HSE upheld its position that a small amount of information was excepted from disclosure under regulation 13.

Scope of the case

6. The complainant initially contacted the Commissioner on 15 August 2011 to complain about the way his request for information had been handled. At that time the Commissioner sought to resolve the complaint informally in 2011, including conducting an assessment under section 42 of the Data Protection Act 1998 (the DPA) in respect of the complainant's request for his own personal data. This found that on the balance of probabilities, it was unlikely that the HSE held any further personal data relating to the complainant's industrial accident in 1981.
7. However, the complainant then contacted the Commissioner about the matter again on 27 February 2013 as he was concerned that no further information had been located relating to an accident in 1981. In particular he considered that the first two pages of an accident report had been withheld. The Commissioner again raised this matter with the HSE which confirmed that it considered that the information that was held and had not been disclosed was third party personal data and that regulation 13 applied.
8. In view of the concerns raised by the complainant, the Commissioner considers that the scope of this case is to issue a decision notice in relation to the application of regulation 13.

Reasons for decision

Regulation 2

9. Regulation 2 defines what environmental information is. The first step for the Commissioner here is to consider whether the information falling within the scope of the request is environmental in accordance with this definition and so whether the council correctly dealt with this request under the EIR.
10. Environmental information is defined within regulation 2(1) of the EIR as follows:

"any information in written, visual, aural, electronic or any other material form on –

(a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands...

(b) factors, such as substances, energy, noise, radiation or waste, emissions...affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...".

11. The complainant requested information concerning an industrial accident at a nuclear power station regarding radiation emissions. The Commissioner believes that any information relating to this matter would be environmental information by virtue of Regulation 2(1)(b). The information clearly relates to emissions and therefore, the Commissioner considers it is environmental as it is information on factors such as emissions likely to affect the atmosphere. The HSE was therefore correct to respond to the request under the EIR.

Regulation 13

12. Regulation 13(1) EIR states that:

"To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data."

13. Regulation 13(2) EIR states that:

"The first condition is –

a) in a case where the information falls within any paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene –

i. any of the data protection principles;"

Is the requested information personal data?

14. The Commissioner has first considered whether the requested information is personal data. 'Personal data' is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.

15. The Commissioner has had regard to the withheld information and notes that it consists of the names and additional details of individuals other than the requester. He is therefore satisfied that it relates to an identifiable individual as required by section 1 of the DPA. The Commissioner has therefore gone on to consider whether disclosure of the personal data would breach any of the data protection principles.

Would disclosure of the information breach any of the data protection principles?

16. The first principle of the Data Protection Act 1998 (DPA) states that personal data shall be processed fairly and lawfully. The council considers that it would be unfair to the individuals concerned to disclose the requested information and that doing so would constitute a breach of the first principle of the DPA. The Commissioner has therefore gone on to consider whether disclosing the information would breach the fairness requirements of the first principle of the DPA.

Reasonable expectations

17. The information was generated in 1981 to 1982 and the HSE has therefore explained that it would be very difficult to track down the relevant individuals to ask whether they would consent to the disclosure of their personal data. This large time lapse combined with the fact that the information relates to a power station which ceased operation in 2002 and is being decommissioned also makes it difficult to determine what the reasonable expectations of the individuals would be with regard to the disclosure of their personal data to the world at large.
18. However, the Commissioner notes that the information in question was generated prior to the FOIA, the EIR and the Data Protection Act 1984. He therefore considers that it is likely that the individuals to whom the personal data relates would not have expected it to be disclosed, not least because a disclosure under the FOIA and the EIR represents a disclosure to the world at large.
19. In the absence of any evidence to the contrary and due to the considerable amount of time that has elapsed since the information was created, the Commissioner accepts that on the balance of probabilities, it is beyond the reasonable expectations of the individuals for their personal data to be disclosed to the world at large.

Consequences of disclosure

20. The Commissioner accepts that due to the period of time that has elapsed since the information was created, it is difficult to ascertain what the consequences of disclosure may be. He notes that for the most part, the information is innocuous; referring simply to the names of

individuals, and therefore it would seem that there is unlikely to be a negative consequence of disclosure.

Balancing the rights and freedoms of the data subjects with the legitimate interests in disclosure

21. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake along with case specific interests.
22. Given the age of the information it is difficult to see how the general principles of accountability and transparency can be achieved in the disclosure of the names and limited related personal data of third parties. The information is anodyne in its content and as such the Commissioner cannot see how releasing it into the public domain at this time would have any effect on the general principle of transparency.
23. With regard to case specific interests, the complainant's reason for requesting the information relates to an industrial accident he suffered in 1981 and the action he is currently taking in respect of this. The Commissioner understands that the complainant has great personal interest in being provided with information in unredacted form, i.e., with all third party personal data remaining. However valid the requester's reason for requiring the information in question, this is not a valid consideration for the purposes of the FOIA or the EIR. This is because it is necessary to consider the disclosure of the information to the world at large, and therefore the legitimate interests in disclosure are those of the wider world, not just the requester.
24. As there are very limited, if any, legitimate interests in disclosure, the Commissioner does not find that they outweigh the individuals' rights and freedoms to the extent that it warrants the disclosure of the information.

Conclusion

25. The Commissioner finds that disclosure of the requested personal data would be unfair and would therefore represent a breach of the DPA. He therefore finds that the HSE was correct to rely on regulation 13 to withhold the requested information.

Right of appeal

26. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

27. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
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